

RECEIVED

UNITED STATES DISTRICT COURT

SEP 28 2009

WESTERN DISTRICT OF LOUISIANA

TONY H. WILCOX CLERK
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE, LOUISIANA

LAFAYETTE DIVISION

UNITED STATES OF AMERICA

CRIMINAL ACTION NO. 08-00205-09

VERSUS

JUDGE DOHERTY

ABDUL KAREEM FRANCOIS

MAGISTRATE JUDGE HILL

RULING

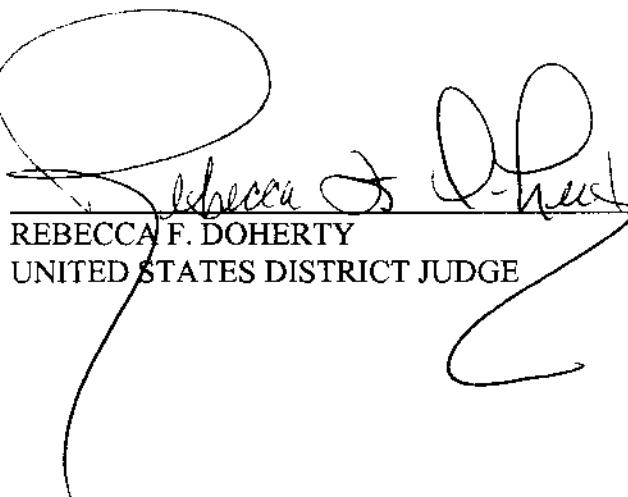
Currently pending before the Court is a motion for reconsideration filed by the United States of America (“government”). [Doc. 317] In the motion, the government moves the Court to reconsider a ruling (entered on September 3, 2009, while taking the trial testimony in open court, by video with the Court and all counsel present and participating, of Rachel Wickman, a forensic chemist with the Acadiana Criminalistics Laboratory), which granted defense counsel’s objection to the government’s offer of a chemist report into evidence, finding the report to be inadmissible hearsay pursuant to FRE 803(8)(B). For the following reasons, the motion is **DENIED**.

The witness testified in open court, with all counsel having opportunity to thoroughly cross-examine both the witness and the information contained in her report; all counsel had her report prior to and during the testimony. Accordingly, the Court finds as a threshold matter, the report is inadmissible pursuant to FRE 803(8)(B). Additionally, the Court finds the government has not presented a basis for admission in light of the reports being hearsay, and notes, allowing the report into evidence would be unfairly prejudicial (for the reasons cited in defendant’s opposition memorandum) and cumulative. *See* FRE 403. Further, the government has failed to present any

independent basis or relevance for admission of the report, over objection, in light of the testimony which has already been presented, in open court and with full opportunity for cross-exam.

As to the government's alternative argument, the government has not identified any "express or implied charge against the declarant of recent fabrication or improper influence or motive," which it wishes to rebut with the report. *See* FRE 801(d)(1)(B). Thus, its alternative argument is equally unpersuasive.

THUS DONE AND SIGNED in Chambers, Lafayette, Louisiana this 25 day of September, 2009.


REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE